

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
GALVESTON DIVISION**

KACEY NICOLE WAGNER

Plaintiff,

v.

**NEWREZ, LLC d/b/a Shellpoint Mortgage
Servicing**

Defendant.

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CASE NO. 3:22-cv-257

**REPLY TO DEFENANT’S OBJECTION TO ROBERT NEWARK’S MOTION TO
WITHDRAW AS COUNSEL FOR PLAINTIFF**

TO THE HONORABLE JUDGE OF SAID COURT:

Robert C. Newark, III ("Movants") provides this reply to the Motion to Withdraw.

1. Defendant first states that Movant’s withdrawal would leave Plaintiff unprepared or represented at her deposition. However, Movant has attempted to make contact with Plaintiff to prepare her for her deposition, set for March 10, 2023, and assist in her completion of discovery responses which are due on March 17, 2023. Since approximately, January 2023, Movant has only been able to communicate by text message or email. When Movant attempts to call her, Plaintiff does not answer the phone nor have a working voicemail. That being said, it is completely impossible for Movant to provide legal counsel to an individual that will not answer the phone.

2. Defendant also states that Movant has failed to provide any details as to mitigate prejudice to Ms. Wagner. First, Defendant does not show that it has a duty to

protect the rights of an opposing party. However, disregarding that, Movant would again state that the only communication is by text message and email. Since Movant has failed to get the Plaintiff on the phone, Movant has not been able to effectively communicate with Plaintiff. As such, Movant has clearly shown that he is unable to discharge his duties to his client as required by the Texas Rules of Disciplinary Conduct. To put it another way, Plaintiff's conduct has effectively discharged Movant by her failure to speak to Movant by telephone.

3. Defendant has failed to notify the Court that Movant has continued to work to resolve this matter and attend the Deposition set for March 10, 2023. Movant had no intent to not attend the deposition even with the filing of the Motion to Withdraw pending. Since Movant had not heard from Plaintiff and have a meaningful discuss and client preparation, Movant suggested that the parties appear by zoom for the deposition. As such, Defendant issued a new Notice with the zoom instructions. As soon as the Notice was provided, Movant emailed the said Notice to Plaintiff, mailed the Notice overnight to Plaintiff, and called the Plaintiff by phone. To this date, Movant has never heard from Plaintiff as to her intent to attend her deposition or even prepare for that deposition.

WHEREFORE, PREMISES CONSIDERED, Movants respectfully request that the Court enter an order permitting Robert C. Newark, III, to withdraw as counsel of record for Plaintiff.

Respectfully submitted,

/s/ Robert C. Newark

Robert C. Newark

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ATTORNEY FOR PLAINTIFF

CERTIFICATE OF SERVICE

A true and correct copy of this document was served by ECF on March 8, 2023 to:

Melanie D. Morgan

Additionally, a copy was mailed to Plaintiff at the address indicated in this motion and email to her at kaceywag@gmail.com.

/s/Robert C. Newark, III

Robert C. Newark, III